STATE OF CALIFORNIA
FRANCHISE TAX BOARD - Legal Branch
PO Box 1720
Rancho Cordova CA 95741-1720
(916) 845-3309 Fax (916) 845-3648

STEVE WESTLY
Chair

CAROLE MIGDEN
Member

STEVE PEACE
Member

April 7, 2003

LEGAL RULING 2003- 1

SUBJECT: Sourcing of Partnership, S corporation and Trust Items for a Part-Year Resident

PURPOSE

The purpose of this ruling is to provide guidance to taxpayers regarding the inclusion and sourcing of items to be reported from partnerships (including limited liability companies classified under federal and California tax law as partnerships), S corporations, and certain trusts when the partner, shareholder or beneficiary is a part-year resident during any part of its own or the partnership's, S corporation's or trust's taxable year.

ISSUE

What amounts should a part-year resident report from a partnership, an S corporation or trust?

FACTS

<u>Situation 1</u>: Taxpayer W, a nonresident calendar year individual taxpayer, has a fifty percent interest in partnership P. P has a December 31st yearend. P conducts business within and without California. For the fiscal year ended December 31, 20XX, W's K-1 from P shows that W has $10,000 of taxable income from all sources, $5,000 of which is sourced to California. On September 15, 20XX, W became a resident of California.

<u>Situation 2</u>: Taxpayer X, a nonresident calendar year individual taxpayer, has a fifty percent interest in partnership P. P has a June 30th yearend. P conducts business within and without California. For the fiscal year ended June 30, 20XX, X's K-1 from P shows that X has $10,000 of taxable income from all sources, $5,000 of which is sourced to California. On January 1, 20XX, X became a resident of California.

<u>Situation 3</u>: Taxpayer Y, a calendar year individual resident of California, owns fifty percent of S corporation (S). S has an October 31st yearend. S conducts business within and without California. For its October 31, 20XX yearend, Y's K-1 from S shows that Y has $8,000 of taxable income from all sources, $3,000 of which is sourced to California. On June 10, 20XX, Y became a nonresident taxpayer.

<u>Situation 4</u>: Same facts as Situation 3, except that Y obtains an interim statement from S which shows that for the period from November 1 of the prior year through June 9, 20XX,

S has taxable income from all sources of $9,600, $4,000 of which is sourced to California. For the period June 10, 20XX through October 31, 20XX, S has income from all sources of $6,400, $2,000 of which is sourced to California.

Situation 5: Taxpayer Z, a nonresident calendar year taxpayer, is the sole beneficiary of simple trust T. T was formed on September 10, 20XX and has a December 31st yearend. T conducts business within and without California. For its December 31, 20XX yearend, Z's K-1 from T shows that Z has $15,000 of taxable income from all sources, $10,000 of which is sourced to California. On November 3, 20XX, Z became a resident of California.

BACKGROUND

Revenue and Taxation Code section 17861, as in effect prior to its repeal effective January 1, 1983, stated:

> In computing the taxable income of a partner for a taxable year, the inclusions required by Sections 17852 and 17853 and 17866 with respect to a partnership shall be based on the income, gain, loss, deduction or credit of the partnership for any taxable year of the partnership ending within or with the taxable year of the partner.

This language was identical to Internal Revenue Code section 706(a) with the exception of the citation to other Internal Revenue Code sections. Revenue and Taxation Code section 17861 was repealed as part of California's original federal conformity legislation in 1983 because Revenue and Taxation Code section 17851 was added at that time, which section conformed to all of Subchapter K of the Internal Revenue Code.

In the *Appeal of Jerald L. and Joan Katleman*, 76-SBE-110 (December 15, 1976), the State Board of Equalization addressed the issue of whether partnership income accrued after the appellants had become residents of California. Appellants were partners in a fiscal year partnership. Appellants moved to California in the summer of 1968. Appellants argued that their distributive share of partnership income for the partnership year ended January 31, 1969, accrued to appellants prior to their 1969 taxable year and was excluded from their 1969 income, the year at issue in the appeal, under Revenue and Taxation Code section 17596 (the predecessor to Revenue and Taxation Code section 17554). The Board of Equalization stated:

> With respect to the partnership income, we note initially that the fiscal or taxable year of the partnership in question ended January 31, 1969. Under California tax law, a partner's distributive share of partnership income is not ascertainable or identifiable until the close of the partnership's taxable year. (Rev. & Tax. Code, §17861; Cal. Admin. Code, tit. 18, reg. 17861-17863.) Furthermore, it is the partnership's taxable year ending within or with the partner's taxable year which determines the partner's distributive share for that year. (Rev. & Tax. Code, §17861.) Therefore, with respect to the instant appeal, it is the partnership's distributive share income for the

> taxable year ended January 31, 1969 which is includible in appellants' gross income from the calendar year 1969. Accordingly, the partnership income in question did not accrue to appellants prior to 1969. [Footnote omitted.]
>
> In summary, it is our opinion that respondent properly included . . . the partnership income in appellants' taxable income for 1969 since those items of income accrued to appellant after the time when they became California residents.

Subsequent to *Katleman*, the State Board of Equalization adopted a two-prong test that had to be met before Revenue and Taxation Code section 17596, regarding accrual of income, could be applied. (*Appeal of Virgil M. and Jeanne P. Money*, 86-SBE-26 (December 13, 1983).) First, California's only basis for taxation under that section is the taxpayer's residency in this State and second, California's taxation would differ depending upon whether the taxpayer used the accrual or cash method of accounting.

In the *Appeals of John and Dolores Lacey, and Elizabeth Lacey*, 84-SBE-107 (June 27, 1984), the State Board of Equalization determined that the second prong of the *Money* test was not met in dealing with partnership income because "section 17861 sets forth when a partnership's distributive share of partnership income is included in the partner's taxable income, [and it] makes no distinction between cash and accrual basis taxpayers and treats all taxpayers identically." The State Board of Equalization stated that "[s]ince a specific statute treats all partners as if they are on the same method of accounting, we need not use section 17596 to obtain the same outcome." The State Board of Equalization then cited Revenue and Taxation Code section 17861, *Katleman* and the *Estate of Levine* v. *Comm'r* (1979) 72 T.C. 780, affd. (2d Cir. 1980) 634 F.2d 12,[1] stating that "a partner's distributive share of partnership income or loss is fixed at the end of the partnership's taxable year and includes all of the partnership's items of income and deductions for that taxable year." In the *Lacey* appeal, the partnership's taxable year ended December 31, 1975. The appellants were residents of Montana when the partnership sold its ranch operations on August 15, 1975. Appellants became residents of California on October 1, 1975. The State Board of Equalization concluded that appellants' entire distributive share of partnership income was includible in appellants' 1975 California taxable income.

Similarly, the State Board of Equalization decided in the *Appeal of Dennis and Dianne Kimbrough*, 84-SBE-105 (June 27, 1984), that appellants' partnership income was taxable by California because Revenue and Taxation Code section 17861 made no distinction between cash and accrual basis taxpayers. Appellants were residents of Kansas until the end of May of 1977 when they moved to California. Appellants filed part year returns for both Kansas and California. In their Kansas return, they included partnership income

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[1] In the *Estate of Levine*, *supra*, 72 T.C. 780, affd., 634 F.2d 12 (2d Cir. 1980), the Tax Court discusses whether a partnership existed and in finding that it did, states that the transaction at issue in the case occurred on July 1, 1968 which fell within the partnership's December 31, 1968 year end. The gain flowed through the partnership to the partner's taxable year ended July 31, 1969. There was no statement to the effect that partnership income could only be determined at the end of the partnership's year. The court of appeals did not discuss the partnership issue.

attributable to the period January through May of 1977 and on their California return partnership income attributable to the period July through December of 1977.[2] The State Board of Equalization, citing the same authorities it cited in *Lacey*, stated that "appellant's [sic] distributive shares of each of the partnerships' income for the 1977 tax year did not become ascertainable until December 31, 1977. . . ." Since the partnership income was not ascertainable until after appellants became California residents, the entire distributive shares of the partnership's income were includible in appellants' taxable income for 1977.

Both *Lacey* and *Kimbrough* involved the situation where a nonresident became a resident of California and was a resident on the last day of the partnership's taxable year. In the *Appeal of Ronald P. and Gertrude B. Foltz*, 85-SBE-022 (April 9, 1985), appellants were California residents until they moved to Montana on July 10, 1979. Appellant-husband was a partner in Deloitte, Haskins and Sells until June 2, 1979, the end of the firm's fiscal year and the date when he resigned. He was entitled to his partnership share of the firm's income and a separation allowance. There was nothing in the record to indicate that the payments, made as compensation for services rendered by appellant, were from sources other than from within California. FTB argued that all of appellants' partnership income was taxable to California because first, it was sourced to California, and second, appellant-husband was a resident at the time he became entitled to the income so that Revenue and Taxation Code section 17596 applied. The State Board of Equalization stated that "[g]ross income includes income from sources within this state for both residents (Rev. & Tax. Code, § 17041) and nonresidents (Rev. & Tax. Code, § 17951)." Since all of the income was sourced to California, it was all taxable. "Since taxation is imposed here on a source basis, section 17596 noted above is irrelevant since that section deals only with taxation affected by a change in residency. (*Appeal of Virgil M. and Jeanne P. Money*, Cal. St. Bd. of Equal., Dec. 13, 1983.) Accordingly, there is no reason for us to address respondent's second basis for taxation or appellant's reliance upon *Appeal of Jerald L. and Joan Katleman*, decided on December 15, 1976, both of which deal with change-of-residency situations."

The State Board of Equalization has consistently applied a source-based concept of taxation for full-year nonresident partners. (See the *Appeal of Lore Pick*, 85-SBE-066 (June 25, 1985), the *Appeal of George D. Bittner*, 85-SBE-111 (October 9, 1985), and the *Appeal of Estate of Marion Markus*, 86-SBE-097 (May 6, 1986).)

In June of 1999, the California Court of Appeal, Second Appellate District, addressed the application of Revenue and Taxation Code section 17554, the successor to Revenue and Taxation Code section 17596, in *Daks* v. *Franchise Tax Board* (1999) 73 Cal. App. 4th 31. *Daks* did not involve the taxation of partnership income, but amounts distributed from a pension plan. The court noted that Revenue and Taxation Code section 17501, incorporating Internal Revenue Code section 402(a), provided "a specific statutory mandate about the manner in which pension distributions are to be taxed in California. Since section 17554 is general in that it does not differentiate between one type of income and any other, the pension-specific provisions of section 17501 trump section

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2 It is unclear from the decision what happened to the month of June.

17554." *Daks* thus severely limited the application of Revenue and Taxation Code section 17554.

Operative for taxable years beginning on or after January 1, 2002, Revenue and Taxation Code section 17554 was repealed by Statutes 2001, chapter 920, section 15.

Although the State Board of Equalization decisions addressed only flow-through items from partnerships, the Franchise Tax Board has applied the same method of taxation for flow-through items from S corporations and certain trusts.

The enactment of Assembly Bill 1115 (Stats. 2001, ch. 920) caused the Franchise Tax Board to re-examine its inclusion and sourcing rules. As a result, partners, shareholders of S corporations, and beneficiaries of certain trusts who change residency status during their own or the partnership's, S corporation's or trust's year will pro-rate items of income, deduction and credit between the period of residency and non-residency to determine the proper amount to be reported in California taxable income. Staff at the Franchise Tax Board intends to propose regulations under Revenue and Taxation Code section 17041 that are expected to be consistent with the holdings and principles of this ruling.

LAW AND ANALYSIS

Revenue and Taxation Code section 17041, subdivision (i)(1), states, in pertinent part, that:

> the term 'taxable income of a nonresident or part-year resident' includes each of the following:
>
> (A) For any part of the taxable year during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income and all deductions regardless of source.
>
> (B) For any part of the taxable year during which the taxpayer was not a resident of this state, gross income and deductions derived from sources within this state, determined in accordance with Article 9 of Chapter 3 (commencing with Section 17031 [sic] and Chapter 11 (commencing with Section 17951).

Revenue and Taxation Code sections 17024.5, subdivision (d), and 23151.5, subdivision (d), state that "[w]hen applying the Internal Revenue Code for purposes of this part, regulations promulgated in final form or issued as temporary regulations by 'the secretary' shall be applicable as regulations under this part to the extent they do not conflict with this part or with regulations issued by the Franchise Tax Board."

Revenue and Taxation Code section 17851 conforms to Subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to partners and partnerships, except as otherwise provided.

Treasury Regulation section 1.702-1(a) states that each "partner is required to take into account separately in his return his distributive share, whether or not distributed, of each class or item of partnership income, gain, loss, deduction, or credit . . .."

Internal Revenue Code section 702(b) states that the "character of any item of income, gain, loss, deduction, or credit included in a partner's distributive share . . . shall be determined as if such item were realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership."

Internal Revenue Code section 706(a) states that in "computing the taxable income of a partner for a taxable year, the inclusions required by section 702 and section 707(c) with respect to a partnership shall be based on the income, gain, loss, deduction, or credit of the partnership for any taxable year of the partnership ending within or with the taxable year of the partner."

Revenue and Taxation Code section 23800, for taxable years beginning on or after January 1, 1987, conforms to Subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to the tax treatment of S corporations and their shareholders, except as otherwise provided.

Treasury Regulation section 1.1366-1(a)(1) states that an "S corporation must report, and a shareholder is required to take into account in the shareholder's return, the shareholder's pro rata share, whether or not distributed, of the S corporation's items of income, loss, deduction, or credit described in paragraphs (a)(2), (3), and (4) of this section. A shareholder's pro rata share is determined in accordance with the provisions of section 1377(a) and the regulations thereunder. The shareholder takes these items into account in determining the shareholder's taxable income and tax liability for the shareholder's taxable year with or within which the taxable year of the corporation ends."

Internal Revenue Code section 1366(b) states that the "character of any item included in a shareholder's pro rata share . . . shall be determined as if such item were realized directly from the source from which realized by the corporation, or incurred in the same manner as incurred by the corporation."

Revenue and Taxation Code section 17731 conforms to Subchapter J of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to estates, trusts, beneficiaries and decedents, except as otherwise provided.

Internal Revenue Code section 652(a) states that "the amount of income for the taxable year required to be distributed currently by a trust described in section 651 shall be included in the gross income of the beneficiaries to whom the income is required to be distributed, whether distributed or not."

Internal Revenue Code section 652(b) states that for a trust required to distribute current income only (a simple trust), the amount of income included in the gross income of the beneficiary "shall have the same character in the hands of the beneficiary as in the hands of the trust."

Internal Revenue Code section 652(c) states that if "the taxable year of a beneficiary is different from that of the trust, the amount which the beneficiary is required to include in gross income in accordance with the provisions of this section shall be based upon the amount of income of the trust for any taxable year or years of the trust ending within or with his taxable year."

Internal Revenue Code section 662(a) states, in pertinent part, that "there shall be included in the gross income of a beneficiary . . . [t]he amount of income for the taxable year required to be distributed currently to such beneficiary, whether distributed or not."

Internal Revenue Code section 662(b) states, in pertinent part, that "[t]he amounts determined under subsection (a) shall have the same character in the hands of the beneficiary as in the hands of the estate or trust."

Internal Revenue Code section 662(c) states that if the "taxable year of a beneficiary is different from that of the estate or trust, the amount to be included in the gross income of the beneficiary shall be based on the distributable net income of the estate or trust and the amount properly paid, credited or required to be distributed to the beneficiary during any taxable year or years of the estate or trust ending within or with his taxable year."

The Internal Revenue Code provisions cited above, and conformed to under California law, deal with the requirement that the partner, the S corporation shareholder or the trust income beneficiary report the income of the respective entity, whether distributed or not, the character of that income, and the timing for when the income is to be reported by the partner, shareholder or beneficiary. These Internal Revenue Code provisions do not address the sourcing of income or the impact of a change in residency by a partner, shareholder or beneficiary.

The State Board of Equalization decisions, starting with the *Appeal of Jerald L. and Joan Katleman*, *supra*, *76-SBE-110,* relied upon former Revenue and Taxation Code section 17861, which was identical to Internal Revenue Code section 706(a), for the proposition that partnership income was not "ascertainable or identifiable" until the close of the partnership year. Whether income could be ascertained or identified only at yearend was part of the analysis to determine whether income had accrued by a certain date. The accrual concept with respect to the determination of whether income is sourced to this state no longer exists after the repeal of Revenue and Taxation Code section 17554. The determination of when partnership income becomes "ascertainable or identifiable" is irrelevant for purposes of determining whether partnership income is sourced to this state.

Federal revenue rulings provide guidance on the meaning of the language of Internal Revenue Code section 706(a). Revenue Ruling 77-310, 1977-2 C.B. 217, states that "[s]ection 706(a) of the Code does not determine when a partnership loss has been sustained. It merely prescribes in which taxable year the partnership loss is included in computing the taxable income of a partner." Likewise, Revenue Ruling 77-311, 1977-2 C.B. 218, states "the language of section 706(a) of the Code does not mean that Y's distributive share of X's loss was sustained by Y on December 31, 1976. That language

merely describes in which taxable year the partnership items shall be included in the taxable income of a partner."

These revenue rulings make it clear that partners do not realize partnership income, nor sustain partnership losses, on the last day of the partnership's year. Rather, these items are, consistent with Internal Revenue Code section 702(b), realized by the partner throughout the year as if the partner realized these items "directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership." (Internal Revenue Code section 702(b).) Therefore, the partners realize income and losses throughout the partnership year as the income is realized by the partnership. Section 706(a) does not determine the date on which income is deemed realized, but only specifies the taxable year the income is to be reported by the partner. The same holds true for owners and beneficiaries of other conduit-type entities,[3] such as shareholders of an S corporation and beneficiaries of certain trusts.[4]

Revenue and Taxation Code section 17041, subdivision (i), clearly states that a part-year resident must report the sum of two items: 1) all items of income and deduction for the period of residency, regardless of source, and 2) gross income and deductions derived from sources within this state for the period of nonresidency. In effect, the part-year resident must divide his or her taxable year into two distinct periods.[5] For the period during which the part-year resident was a resident of this state, all items of income and deductions are to be included in the partner's California taxable income. Therefore, all items of income and loss realized by the partnership during the partnership's taxable year when the partner was a resident are included in the partner's California taxable income. For the period during which the part-year resident was a non-resident of this state, only gross income and deductions realized from sources within this state are included in taxable income. Therefore, all California-sourced items of income and loss realized by the partnership during the partnership's taxable year when the partner was a non-resident of this state are included in California taxable income. The same rules hold true for a shareholder of an S corporation and a beneficiary of a simple trust or a complex trust required to distribute income currently.[6]

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[3] Partnerships, S corporations and simple trusts are subject to the conduit theory. See, *United States* v. *Basye* (1973) 410 U.S. 441, 448, fn. 8; *Valentino* v. *Franchise Tax Board* (2001) 87 Cal.App.4th 1284, 1290; *Freuler* v. *Helvering* (1934) 291 U.S. 35, 41-42; *United California Bank* v. *United States* (1978) 439 U.S. 180, 199.

[4] The trust provisions that address the timing of the reporting of income (Internal Revenue Code sections 652(c) and 662(c)) apply only when the trust and the beneficiary have different taxable years.

[5] This is consistent with Treasury Regulation section 1.871-13(a). The two periods do not constitute, however, separate taxable years. (*Estate of Petschek* v. *Comm'r* (1983) 81 T.C. 260, 264, fn. 6.)

[6] In *Furstenberg* v. *Commissioner* (1984) 83 T.C. 755, the Tax Court did not apply the usual rule of calculating an accumulation distribution as of the end of the complex trust's year in the case where the beneficiary changed citizenship status during the tax year. The court noted, "the statutory scheme governing complex trust distributions makes no special provision for the unique considerations involving change-in-status taxpayers." (*Furstenberg* v. *Comm'r, supra,* 83 T.C. 755, at p. 788.) In that case, the taxpayer was a United States citizen both during the years of accumulation and at the time of the distribution. The court stated that it was "not announcing a hard and fast rule with respect to the timing of

This position is consistent with federal law dealing with a dual status taxpayer. A dual status taxpayer is defined as a taxpayer who has been both a resident alien and a nonresident alien in the same tax year or a United States citizen and non-United States citizen in the same tax year. In the *Estate of Petschek* v. *Commissioner* (1983) 81 T.C. 260, the court determined that the sole beneficiary of a calendar year simple trust with no United States source income who resided outside of the United States during his entire taxable year, but changed citizenship on November 24, had to report all foreign sourced income of the trust during the period he was a United States citizen and none for the period he was not a citizen. In reaching this conclusion, the court noted that "a beneficiary does not realize taxable income from a simple trust based on the fact that the beneficiary may actually or constructively receive such income. . . . The test of taxability to the beneficiary is not receipt of income, but the present right to receive it." (*Estate of Petschek* v. *Commissioner, supra,* 81 T.C. 260, 267.) The "beneficiary of a simple trust realizes income simultaneously with the trust's realization of income throughout its taxable year. Put another way, the taxable event to the beneficiary – the attaching of the present right to receive income – occurs daily as the trust realizes income, and does not occur only on the last day of the trust's taxable year." (*Id.* at p. 268.) The taxpayer argued that since distributable net income (DNI) "is ordinarily calculated on the basis of the trust's taxable year, the beneficiary cannot know the trust's DNI until the end of the trust's taxable year. Thus, petitioner argues, the trust income is received for tax purposes only on the last day of the trust's taxable year." (*Id.* at p. 269.) The court rejected the taxpayer's argument because the trust was a conduit.

The court in *Petschek* also commented on the year-end inclusion rule of Internal Revenue Code section 652(c), stating that "there is inherent in section 652(c) the implicit assumption that the respective statuses of the trust and the beneficiary will not have changed from year to year, and the section simply does not deal with atypical situations such as, for example, the situation where no trust year ends with or within the taxable year of the beneficiary who dies." (*Estate of Petschek* v. *Commissioner, supra,* 81 T.C. 260, 270.) The court concluded that "the income of the simple trust in question should be taxed to Petschek, on the same basis as it would have been had he owned the trust assets directly. Thus, Petschek's share of the income is to be considered his property from the moment of its receipt by the trust (*Freuler* v. *Helvering*, *supra*), regardless of whether it might have been distributed to him, and thus 'received' by him, after the date upon which he surrendered his U.S. citizenship." (*Id*. at p. 271.)

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income inclusion of an accumulation distribution by a change-of-status taxpayer. On the facts of this case, however, we think the accumulation distribution is includable in petitioner's income for the period during which she was a U.S. citizen." (*Id.* at p. 790.) While this ruling limits its application to beneficiaries of simple trusts and complex trust required to distribute income currently, there may be times, such as in the *Furstenberg* case, that it would be appropriate to apply the holdings and principles of this legal ruling to beneficiaries of a complex trust.

As noted by the Tax Court in *Estate of Petschek* v. *Commissioner, supra,* 81 T.C. 260, a change of residency status will override the general rule regarding the timing of the reporting of income from a conduit entity at yearend.[7] This holding is consistent with a long-standing federal tax determination that a dual status citizen is not taxed based upon the taxpayer's residency status on the last day of the taxpayer's taxable year. In *Lee* v. *Commissioner* (1927) 6 B.T.A. 1005, the Board of Tax Appeals held that the commissioner could not tax income earned outside the United States by a taxpayer while the taxpayer was a nonresident alien, even though on the last day of the taxpayer's taxable year he was a resident alien because section 213(c) of the Revenue Act of 1921 stated that in "the case of a nonresident alien individual, gross income means only the gross income from sources within the United States."

Revenue and Taxation Code section 17041, subdivision (i), is clear -- the taxable income of a nonresident or part year resident may only include California-sourced income and deductions for any part of the year that the taxpayer was a nonresident. If a taxpayer is a nonresident for part of a partnership's, S corporation's or trust's taxable year, only California-sourced income for the portion of the year the taxpayer was a nonresident is included in California taxable income even though the taxpayer was a full year resident of the state for the entirety of the taxpayer's taxable year. Under the conduit theory, a partner, shareholder or beneficiary is taxed as if the business of the partnership, S corporation or trust were conducted directly by the partner, shareholder or beneficiary. (*Valentino* v. *Franchise Tax Board* (2001) 87 Cal.App.4th 1284, 1290; *Estate of Petschek* v. *Comm'r, supra,* 81 T.C. 260, 271.) Thus, under Revenue and Taxation Code section 17041, subdivision (i), there is no difference in the amount of income reported to this state whether the business operation is owned and operated directly or through a partnership, S corporation or certain type of trusts.

The allocation of income between a part-year resident's period of residency and period of non-residency must be made in a manner that reflects the actual date of realization. In the absence of information that reflects the actual date of realization, the taxpayer must allocate an annual amount on a proportional basis between the two periods, using a daily pro rata methodology as set forth in this ruling.

HOLDINGS

<u>Situation 1</u>: W was a nonresident for 257 days of P's fiscal year and a resident for 108 days. W will include in California taxable income for 20XX, $6,480 of income from P, calculated as follows:

[7] The Tax Court also determined that only a pro rata portion of a deemed dividend from a foreign personal holding company should be included in income to reflect the fact that the taxpayers had been resident aliens only for the last portion of the year, "in spite of the unambiguous statutory directive under sec. 551(b) . . . that the full amount of a deemed dividend from a foreign personal holding company is to be included in the shareholder's income as of the last day of the year." (*Furstenberg* v. *Commissioner, supra,* 83 T.C. 755, 788, fn. 25.)

- For the portion of the year W was a nonresident: 257/365 X $5,000 = $3,521
- For the portion of the year W was a resident: 108/365 X $10,000 = $2,959

Situation 2: X was a nonresident for 184 days of P's fiscal year and a resident for 181 days. X will include in California taxable income for 20XX, $7,480 of income from P, calculated as follows:

- For the portion of the year X was a nonresident: 184/365 X $5,000 = $2,521
- For the portion of the year X was a resident: 181/365 X $10,000 = $4,959

Situation 3: Y was a nonresident for 144 days of S's fiscal year and a resident for 221 days of S's fiscal year. Y will include in California taxable income for 20XX, $6,028 of income from S, calculated as follows:

- For the portion of the year Y was a nonresident: 144/365 X $3,000 = $1,184
- For the portion of the year Y was a resident: 221/365 X $8,000 = $4,844

Situation 4: Y will include in California taxable income for 20XX, $5,800 of income from S, calculated as follows:

- For the portion of the year Y was a nonresident: 50%[8] X $2,000 = $1,000
- For the portion of the year Y was a resident: 50% X $9,600 = $4,800

Situation 5: Z was a nonresident for 54 days of T's taxable year and a resident for 59 days. The trust had a short taxable year consisting of 113 days. Z will include in California taxable income for 20XX, $12,611 of income from T, calculated as follows:

- For the portion of the year Z was a nonresident: 54/113 X $10,000 = $4,779
- For the portion of the year Z was a resident: 59/113 X $15,000 = $7,832

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[8] The 50% used in this situation is the Y's 50% interest in the S corporation. The interim statements relied upon by Y were for the S corporation's entire income and not Y's share of S's income.

EFFECTIVE DATE

This ruling will be applied for taxable years beginning on or after January 1, 2002.

DRAFTING INFORMATION

The principal author of this ruling is Debra S. Petersen of the Franchise Tax Board, Legal Branch. For further information regarding this ruling, contact Ms. Petersen at the Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720.